

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JUSTIN GUY, individually and on
behalf of those similarly situated,

Plaintiff,

v.

Case No. 20-cv-12734-MAG-EAS
HON. MARK A. GOLDSMITH

ABSOPURE WATER COMPANY, LLC
a domestic limited liability company,

Defendant.

**DECLARATION OF PATRICK BYRNE IN SUPPORT OF
DEFENDANT’S MOTION TO AMEND AFFIRMATIVE DEFENSES**

I, Patrick Byrne, declare as follows:

1. My name is Patrick Byrne and I am currently employed as an Accounting Manager with Absopure Water Company, LLC (“Absopure”), the Defendant herein.

2. I am over 18 years of age. I have personal knowledge of the matters stated herein, except for those matters stated upon information and belief. If called upon as a witness, I could and would competently testify as to the matters stated herein, except for those matters as stated upon my information and belief, and as to those matters, I believe them to be true.

3. I am filing this Declaration in Support of Defendant Absopure's Motion to Amend Affirmative Defenses. ("Motion").

4. Over seventy-five percent of Absopure's sales are of consumer items to end customers and are not for resale, including bottled water, coffee and related items. Confidential documents breaking out the retail and wholesale sales revenue by customer group for both Absopure's Plymouth and Grand Rapids locations for the years 2017 through 2022 have been produced to Plaintiffs and bear the bates numbers ABS 004196-004231.

5. Both of Absopure's locations, Plymouth and Grand Rapids, are open to the public, such that consumers can and do walk in or call in to make orders.

6. Absopure's employees who are Sales and Service Specialists ("Specialists") and Sales and Service Specialist Trainees ("Specialist Trainees") are paid on a commission basis such that the amounts they earn are determined based on percentages of the revenue of the products they sell on their routes. The percentages vary by product, with higher percentages paid for products with higher margins.

7. Specialists Trainees are paid a guaranteed minimum amount per day. If the total of commissions earned by the Specialist Trainee on any given day amounts to less than the guaranteed minimum, the Specialist Trainee nevertheless receives the minimum amount. If the total of commissions earned by the Specialist

Trainee on any given day is equal to or greater than the guaranteed minimum, the Specialist Trainee receives the commission total. Specialists do not receive any guaranteed amount except for vacation, flex days, holidays or vehicle breakdowns.

8. Specialist Trainees who have obtained commercial driver's licenses ("CDL") receive a higher minimum guaranteed amount than those who have not.

The amounts of the minimum guarantees have been as follows:

Dates	Minimum –without CDLs	Minimum –with CDLs
Before 5/7/2018	\$100/day	\$120/day
5/7/2018 to 11/7/2021	\$120/day	\$140/day
11/8/2021 to present	\$140/day	\$170/day

9. Employees are compensated in additional ways based on customer sales. Specialists and Specialist Trainees with CDLs also receive a one per cent bonus on the total revenue of products sold on their routes during each quarter, less any shortages in product inventory or cash payments. All Specialists and Specialist Trainees, regardless of having a CDL, receive a \$75.00 bonus if they close the sale on a new customer who receives products and \$35.00 bonus if they refer a new customer when the sale is closed by someone else.

10. Specialists and Specialist Trainees also receive some payments not directly related to sales. All Specialists and Specialist Trainees receive \$7.00 every time they place a water cooler at a location, \$3.00 every time they remove a water cooler, and \$10.00 if they do both. All Specialists and Specialist Trainees are paid

\$20.00 whenever they deliver 1,100 or more units of water in a week, units being either or both 5-gallon water bottles or cases of smaller bottles.

11. All Specialists and Specialist Trainees receive guaranteed minimum amounts for vacation days, flex days, holidays, and days on which their vehicles break down. For Specialist Trainees, the minimums for vacation days, holidays and flex days have been the same as their commission guarantees. For Specialists, their payments for vacation days and flex days are their average commissions for the previous twelve months and their payment for holidays is \$170.00 per day. For vehicle breakdown days, the payment amounts have been as follows:

Dates	Spec. Trainees – without CDLs	Spec. Trainees – with CDLs	Specialists
Before 5/7/2018	\$175.00	\$195.00	\$195.00
5/7/2018 to 11/7/2021	\$195.00	\$215.00	\$215.00
11/8/2021 to present	\$215.00	\$245.00	\$245.00

I declare under penalty of perjury that the foregoing is true and correct based on my knowledge and belief.

Executed this 22 day of June, 2023.


Patrick Byrne